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10/527,740	08/31/2005	Christoph Kern	095309.56013US	9146
23911 7590 07/29/2009 CROWELL & MORING LLP INTELLECTUAL PROPERTY GROUP P.O. BOX 14300 WASHINGTON, DC 20044-4300			EXAMINER MCPARTLIN, SARAH BURNHAM	
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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/527,740
Filing Date: August 31, 2005
Appellant(s): KERN ET AL.

James F. McKeown
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 6 May 2009 appealing from the Office action mailed 14 April 2008.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

4,655,505	Kashiwamura et al.	4-1987
6,212,719	Thomas	4-2001

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

- Claims 9-10 and 14-16 are rejected under 35 U.S.C. 102(b) as being anticipated by Kashiwamura et al. (4,655,505). With respect to claim 9, Kashiwamura et al. disclose a vehicle seat (S) comprising: a seat cushion (unlabeled), a seat back (unlabeled), a plurality of individually pressurizable elements (1)(2)(3)(4)(5)(6)(7)(8)(9)(10) distributed over substantially an entire surface of at least one of the seat back and the seat cushion for adjusting a seat contour of said vehicle seat (S); and a controller (41) for pressurizing individual pressurizable elements; wherein the controller (41) is configured to provide massage effects, for example "by varying the air pressures to be filled into the air bags in a certain pattern according to the thus detected driving time, for instance every 30 minutes, the body pressure distribution of the driver may be varied and the fatigue of the driver may be reduced" (column 10, lines 33-38) and "by using a relatively short period or high frequency, it is possible to effectively reduce the fatigue of the driver by applying massage to him" (column 10, lines 50-53); and the pressurizable elements are cushion-like elements which are small in relation

to a surface of the seat contour to generate punctiform pressures on the seat back and seat cushion, as is best depicted in Figure 1, and are actuatable via individually via lines (25) via the controller (41) in order to provide massage affects at punctiform locations and change the seat contour in a substantially localized manner. With respect to claim 10, the pressurizable elements (1) to (10) are individually actuatable together with the controller (41), set a desired seat contour. Setting the desired seat contour involves the MEMO sub-routine discussed in column 6, lines 3-35. The pressurizable elements are actuatable via respective separate lines (25), which are brought together at valve unit (24) in a manner such that they are bunched together in the direction of the controller (41) as best depicted in Figure 1. With respect to claim 14, the elements are pressurized pneumatically by way of a "motor-driven air pump 27" (column 3, line 64). With respect to claim 15, the controller (41) is adapted for carrying out a multiplicity of pre-set and individually settable massage functions. Some of the pre-set functions including periodically increasing or decreasing the air pressure in the pressurizable elements to alert a dozing driver or by providing massage in relatively short period or high frequency as disclosed in column 10, lines 28-52. Individually settable massage functions are performed by using UP and DOWN keys as disclosed in column 5, lines 34-68. With respect to claim 16, a plurality of preselected settings of the seat contour can be stored by means of the controller (41) as described by using the MEMO function in column 6, lines 3-13.

- Claims 11, 13, 17 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kashiwamura et al. (4,655,505) in view of Thomas et al. (6,212,719). With respect to claims 11, 13 and 17-20, Kashiwamura et al. disclose all claimed elements with the exception of pressurizable elements and lines which are fixed on a sheet-like support insert or sheet carrier inserted below a covered lining. Thomas et al. disclose a plurality of pressurizable elements (28), which are pressurized via a series of lines (38). Pressurizable elements (28) and lines (38) are fixed on a support insert (26). Support insert (26), pressurizable elements (28) and lines (38) are positioned below a covered lining (16) shown in Figure 1. It would have been obvious to one of ordinary skill in the art at the time of the instant invention to position on the pressurizable elements (1) to (10) disclosed by Kashiwamura et al. on an insert (26) and place the insert between a cover and a lined upholstery layer as taught by Thomas et al. Such a construction provides the massaging benefits of the Kashiwamura et al. device while concealing the mechanisms used to create the massaging effect and also helps prevent the mechanisms from shifting out of place within the seat structure.

(10) Response to Argument

On page 4 of Applicant's Revised Appeal Brief, Applicant first argues that the term "punctiform" has a fairly bounded and well understood definition, namely having the form or character of a point, as is revealed by a simple Google search. The Examiner maintains her stance that the word "punctiform" is a relative term. The word

is not defined in Webster's II New Riverside University Dictionary. Applicant defines the phrase "essentially punctiform" on page 4, line 12 of the specification as meaning "a region which is relatively small in relation to the overall surface of the seat or of the seatback of the vehicle." Applicant's drawings disclose bladders which meet his definition of the word "punctiform." Taking into account the definition provided by Applicant in his own specification and Applicant's drawings, the Examiner contends that bladders 1-10 disclosed by Kashiwamura et al. provide punctiform pressure. Bladders 1-10 appear to be approximately equivalent in size to those disclosed in Figure 1 of Applicant's figures. Bladders 1-10 are "relatively small in relation to the overall surface of the seat" as defined by Applicant. The Examiner maintains that the broadest reasonable interpretation of the word "punctiform" would incorporate bladders such as elements 1-20 disclosed by Kashiwamura et al.

On page 5 of Applicant's Revised Appeal brief, Applicant argues that the bladders disclosed by Kashiwamura cannot provide massage effects at punctiform locations and localizing the changing of seat contour. The Examiner reasserts that bladders 1-10 are "punctiform" in shape. Furthermore, the massaging effects of the bladders are expressly disclosed by Kashiwamura in column 10, lines 44-52. A change in air pressure using a relatively short period or high frequency can help reduce fatigue of the driver by applying massage to him.

Applicant further argues on pages 5 and 6 of the Revised Appeal Brief that seat contouring is not a feature of the seat disclosed by Kashiwamura. Pressurizing the bladders results in expansion and contraction of the bladders and therefore causes

changes in the seat contour at the location of the bladder. The Examiner therefore contends that seat contouring is indeed provided by the Kashiwamura device.

Applicant further argues on page 5 that pressurization of various bags disclosed by Kashiwamura takes place in connection with sensor outputs and without driver intervention or desires. These limitations on which Applicant relies (i.e. direct user input) are not stated in the claims. It is the claims that defined the claimed invention and it is the claims, not the specification, that are anticipated or unpatentable. Even if Applicant were to claim that the device responds to direct user input, Kashiwamura discloses in column 10, line 46 how direct input by the driver via a keyboard can be used to change the air pressure to the desire of the driver.

Applicant further argues on page 5 that massage is not performed with punctiform pressures distribute over substantially the entire seat surface. Once again, the Examiner maintains that bladders 1-10 provide punctiform pressure to the seat occupant. The bladders are distributed over substantially the entire seating surface as is best disclosed in Figure 1. Accordingly, Kashiwamura meets the claim limitations set forth in Claim 9.

Applicant further argues on page 7 that the references of Kashiwamura and Thomas are non-analogous art. It has been held that the determination that a reference is from a nonanalogous art is twofold. First we decide if the reference is within the field of the inventor's endeavor. If it is not, we proceed to determine whether the reference is reasonably pertinent to the particular problem with which the inventor was involved. In this case, the mattress disclosed by Thomas is reasonably pertinent to the particular

problem with which the inventor is involved. More specifically, it pertains to providing massage to an occupant via a support surface. As such, the Examiner contends that the Kashiwamura and Thomas references are indeed analogous art. Furthermore, all of the claimed elements were known in the prior art and one skilled in the art could have combined the elements as claimed by known methods with no change in their respective functions, and the combination yielded nothing more than predictable results to one of ordinary skill in the art.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Sarah B. McPartlin/

Examiner, Art Unit 3636

Conferees:

/D. D./ David Dunn, Supervisory Patent Examiner, Art Unit 3636

/MJ/ Marc Jimenez TQAS TC 3600